Chapter 13: Tobacco control

SUMMARY POINTS

· **The foundation for effective national tobacco control policies lies in comprehensive implementation of the WHO Framework Convention on Tobacco Control (WHO FCTC).**

· **Once it enters into force, the Protocol to Eliminate Illicit Trade in Tobacco Products could provide a comprehensive framework for national legislation to eliminate smuggled, counterfeit and illicit tobacco products that increase the accessibility and affordability of tobacco and undermine government revenues.**

· **The Conference of the Parties to the WHO FCTC has issued detailed guidelines to assist Parties to implement specific provisions of the WHO FCTC in an effective, evidence-based manner.**

· **In entering trade and investment agreements, countries should ensure that they do not unduly restrict their health sovereignty or unduly diminish their capacity to implement and enforce effective tobacco control measures.**

· **Countries should coordinate the activities of their health, trade and finance ministries in order to ensure that they do not undertake trade and investment obligations that unduly conflict with their health goals, including their capacity to effectively regulate tobacco, alcohol and unhealthy food products.**

· **Tax policy is a powerful instrument for raising the price and reducing the affordability of tobacco products. Uniformly high tobacco prices help to discourage initiation, encourage quitting, and reduce the amount of tobacco consumed by those who do not quit. Countries can use tobacco excise tax increases, applied to all brands and forms of tobacco, whether imported or locally produced, to achieve the public health goal of reducing the death and disease caused by tobacco use.**

· **Other priority policies for implementing the WHO FCTC at national level include large, text-based and graphic health warnings on tobacco packages, comprehensive bans on all advertising, promotion and sponsorship of tobacco products, and legislative measures to ensure protection from exposure to tobacco smoke, including in all workplaces, public transport and indoor public places.**

· **The interests of the tobacco industry are in irreconcilable conflict with public health. Governments should limit their interaction with the tobacco industry, ensure that any interactions that do occur are transparent, avoid conflicts of interest and ensure that the industry is excluded from law reform and law-making processes.**

Introduction

There are currently around 1.3 billion smokers in the world, mostly living in low- and middle-income countries. Unless they quit, up to half of them will die prematurely from tobacco-related diseases, including lung cancer, heart disease and stroke and chronic obstructive pulmonary disease.[1] Tobacco killed 100 million people during the twentieth century, and currently causes around 6 million deaths each year, including over 600 000 deaths among non-smokers that are attributable to exposure to

second-hand tobacco smoke.[2] Globally, tobacco is responsible for 12% of all male deaths and 6% of all female deaths.[3] Due to population growth, and the aggressive marketing activities of tobacco companies, tobacco-related deaths are projected to increase, rising from 6 million deaths to around 12 million deaths per year for the period 2025–2050.[4]

13.1 Global tobacco control

(a) The Framework Convention on Tobacco Control

Tobacco use is an "industrially created epidemic" that is sustained by the activities of the tobacco industry.[5] The burden of death and disease caused by tobacco is preventable, but preventing them requires governments to honour their commitments to implement evidence-based and cost-effective legal measures to regulate the tobacco industry.[6] The foundation for effective national tobacco control policies lies in comprehensive implementation of the WHO Framework Convention on Tobacco Control (WHO FCTC).[7] The WHO FCTC was adopted by the World Health Assembly in 2003 and entered into force in 2005. It requires Parties to implement measures to reduce both demand for, and supply of, tobacco products (**Box 13.1**). The Conference of the Parties to the WHO FCTC has issued detailed guidelines to assist Parties to implement specific provisions of the Convention in an effective and evidence-based manner.[8] Under Article 2.1, Parties are encouraged to implement tobacco control measures that go beyond the requirements of the Convention and its protocols and that are consistent with international law.[9]

In many countries, significant law reform efforts are still needed in order to fully implement the provisions of the WHO FCTC. For example, in 2015, 103 countries (and nearly 2.8 billion people) were fully covered by at least one or more tobacco control measures as recommended by WHO in the MPOWER package of recommendations for countries implementing the WHO FCTC. These measures include tobacco taxes, tobacco advertising bans, warning labels and smoke-free controls. Nevertheless, only 49 countries (with 20% of the global population) were covered by two or more such measures.[10]

Box 13.1: Using public health law to reduce supply of and demand for tobacco: the WHO Framework Convention on Tobacco Control

Supply reduction provisions:

- Enact legislation to reduce illicit trade in tobacco products (including for offences in relation to counterfeit and contraband cigarette and authorizing seizure of illicit tobacco and of proceeds derived from commerce in illicit tobacco products) (Article 15).
- Implement legislative or other measures to prevent sales of tobacco to and by minors. These measures may include: prohibiting the manufacture and sale of sweets or other objects in the form of tobacco products that may appeal to minors, prohibiting the distribution of free tobacco products to the public, prohibiting the sale of cigarettes individually or in small packets, ensuring that tobacco vending machines are not accessible to minors, and banning the sale of tobacco products in ways that make them directly accessible to members of the

public (Article 16).

- Provide support for economically viable alternative activities for tobacco workers, growers, and sellers (Article 17).
- Demand reduction provisions:
- Adopt tax and/or price policies aimed at reducing consumption of tobacco (including restrictions on tax- and duty-free tobacco products) (Article 6).
- Ban smoking in indoor workplaces, public transport, indoor public places, and as appropriate, other public places (Article 8).
- Adopt measures for the testing, measuring and regulation of the contents and emissions of tobacco products (Article 9).
- Require tobacco manufacturers and importers to disclose to governmental authorities information about the contents and emissions of tobacco products. Implement measures for the public disclosure of information about the toxic constituents of tobacco products, and the emissions they produce (Article 10).
- Prohibit false, misleading and deceptive labelling and advertising of tobacco products, including descriptors, trademarks or other signs suggesting that a particular product is less harmful than others (e.g. labelling products as “low tar”, “light”, “ultra-light”, or “mild”) (Article 11.1(a)).
- Require each tobacco package to include clearly visible and rotating warnings about the harmful effects of tobacco use, approved by a competent national authority. Warnings should cover 50% or more of the principal display areas, but shall be no less than 30% of the principal display areas (Article 11.1(b)).
- Implement public awareness campaigns to promote access to information regarding the addictive nature of tobacco use, the health effects of smoking and of second-hand smoke, the benefits of tobacco cessation, and the economic and environmental consequences of tobacco production and consumption (Article 12).
- To the extent permitted by each country’s constitution, ban or restrict all tobacco advertising, promotion, and sponsorship. Subject to the legal environment and technical means available to each Party, this shall include a comprehensive ban on cross-border advertising, promotion and sponsorship of tobacco originating from its territory (Article 13).
- Promote cessation of tobacco consumption and treatment for tobacco dependence. This shall include the diagnosis and treatment of tobacco dependence within national health and education programmes (Article 14).

Some countries, particularly those with limited capacity, may find that the most rapid way to make progress in combating the tobacco epidemic is to prioritize the implementation of their obligations under the WHO FCTC in a stepwise manner. WHO’s MPOWER package[11] is not a substitute for the obligations that countries have assumed under the WHO FCTC. However, it may assist Parties to prioritize their actions towards full implement the WHO FCTC by identifying six priority areas for policy action and by explaining their rationale and evidence base. These six areas are:

1. monitor tobacco use and prevention policies;
2. protect from tobacco use;

3. offer help to quit tobacco use;
4. warn about the dangers of tobacco;
5. enforce bans on tobacco advertising and sponsorship; and
6. raise taxes on tobacco.

In 2012, Turkey became the first country in the world to protect its entire population with all six of the MPOWER measures implemented at the highest level of achievement.[12] After ratifying the WHO FCTC in 2004, the Ministry of Health formed a National Tobacco Control Committee to prepare a national implementation plan. Between 2008 and 2012, larger, pictorial warning labels were introduced on tobacco packs, taxes on tobacco increased to in excess of 80% of the retail price, a total ban on all tobacco advertising, promotion and sponsorship was implemented, and smoke-free laws were strengthened to cover restaurants, bars and cafés.[13] During this four-year period, smoking rates fell from 30.1% to 25.7% – a reduction of 14.6%.[14] Turkey's achievement illustrates how rapid changes are possible through sustained political commitment to implementing the core obligations of the WHO FCTC.

The comprehensive tobacco control law passed in 2013 by the Russian Federation illustrates the kind of urgent action still needed in many countries.[15] The law established smoke-free environments in medical, educational, sports and cultural facilities, government buildings, public playgrounds, beaches, apartment stairwells, airports and public transportation. From June 2014, smoking bans were extended to cover hospitality venues including hotels, cafés, bars and restaurants.[16] The retail sale of tobacco products is also banned in many of these places.[17] The law bans retail cigarette displays and prevents retailers from displaying price lists containing colours or logos.[18] Television programmes and movies depicting smoking must also broadcast a public service announcement warning viewers about the health risks of smoking.[19]

During the period of economic transition that occurred in the Russian Federation between 1990 and 2000, cigarette consumption increased by 81%.[20] The Global Adult Tobacco Survey, conducted in 2008–2010, found that 40% of Russians smoke, including 60% of Russian males, giving Russia the highest smoking rates in Europe.[21] Russia's comprehensive approach could dramatically reduce the future burden of tobacco-related disease, and provide an important model for other countries to follow.

A major obstacle to the implementation of effective tobacco control laws at national level is the influence and activities of transnational tobacco companies.[22] As discussed below, two of the major strategies used by transnational tobacco companies are the use of international trade rules and commitments to challenge national tobacco control laws and to gain access to markets, and the use of smuggling and other forms of illicit trade in tobacco products.[23] Like all forms of illicit tobacco trade, smuggling reduces government revenues from the taxing of legitimately produced and imported products. By reducing government revenues, illicit trade in tobacco may also undermine spending on social programmes, including tobacco control programmes.[24]

(b) The Protocol to Eliminate Illicit Trade in Tobacco Products

In 2007, the Conference of the Parties to the FCTC established an Intergovernmental Negotiating Body to negotiate a protocol on illicit trade in tobacco products.[25] Following several years of negotiations, the Protocol to Eliminate Illicit Trade in Tobacco Products was adopted by the Parties to the WHO FCTC in 2012. The Protocol aims to eliminate all forms of unlawful activity relating to the production, shipment, receipt, possession, distribution, sale or purchase of tobacco products.[26] The Protocol requires ratification or formal acceptance by 40 Parties before it enters into force.[27]

Illicit production and smuggling of tobacco products encourage tobacco use and undermine public health policies by reducing prices and increasing access. In turn, lower prices encourage smoking initiation and higher levels of tobacco consumption, particularly among young people, the poor and low-income groups.[28] Illicit trade in tobacco deprives governments of taxation revenues, while also undermining tobacco control laws and policies such as large pictorial warnings and retail controls. The smuggling of tobacco may also threaten national security by providing a lucrative source of income for criminal groups, providing financing for terrorist acts and by facilitating other forms of criminal activity such as money laundering and smuggling of weapons, drugs and counterfeit goods.[29]

The key provisions of the Protocol require Parties to take measures to improve their control of the tobacco supply chain. The Protocol requires Parties to prohibit the manufacture, import or export of tobacco products and manufacturing equipment except in accordance with a licence granted by a national authority.[30] To the extent that it is appropriate, Parties must also licence persons engaged in growing, wholesaling, warehousing, distribution and retailing tobacco products and manufacturing equipment. Parties must establish a designated national authority to administer tobacco licences,[31] and within five years must establish a tracking and tracing system to permit Parties to trace the origin, movement and legal status of all tobacco products within their territory.[32]

National and regional tracking systems provide the basis for a global tracking and tracing regime and global information-sharing focal point (located at the Secretariat of the WHO FCTC) which Parties have agreed to establish within the same five-year period. The obligations of Parties to establish a national tracking system must not be delegated to the tobacco industry, although Parties may require the industry to bear the costs of its administration.[33] The Protocol requires each Party to consider banning retail sales of tobacco products over the Internet or using telecommunications devices.[34] In some countries, including the United States, legislation restricts the retail sale of tobacco through the mail, since mail-order sales may evade excise taxes and make it easier for children and adolescents to purchase tobacco.[35]

(c) World Trade Organization agreements and domestic tobacco control laws

In many countries, the implementation of obligations under the FCTC takes place against the backdrop of the obligations they have assumed as members of the World Trade Organization (WTO). WTO Agreements of potential relevance to domestic tobacco control laws include the General Agreement on Tariffs and Trade (GATT),[36] as well as the Agreement on Technical Barriers to Trade (the TBT Agreement),[37] and the Agreement on Trade-Related Aspects of Intellectual Property Rights

(TRIPS).[38] In implementing all such agreements, countries should ensure that they do not unduly restrict their health sovereignty or unduly diminish their capacity to implement and enforce effective tobacco control measures.

Trade agreements seek to foster a predictable, competitive global marketplace that eliminates discriminatory practices and reduces unnecessary regulatory obstacles to international trade in goods and services and to the global protection of intellectual property rights.[39] These goals are not inherently opposed to the protection of public health. For example, where trade liberalization measures result in economic growth, this may reduce poverty and raise living standards, permitting higher levels of spending on health, education and social services. On the other hand, governments should ensure that the implementation of trade liberalization measures takes account of public health considerations, and that governments preserve the policy space to adopt policies that will best protect the health of the population.[40]

Some aspects of trade agreements require particular scrutiny in terms of their potential impact on public health. For example, reductions in tariffs (customs duties) and the elimination of non-tariff barriers, such as quotas, licences and monopolies, may help to create a more contestable market for tobacco products, increasing the availability of global brands, reducing prices and stimulating demand. Complaint mechanisms in trade agreements provide opportunities for national governments to challenge domestic tobacco control laws in other countries, including import bans, labelling requirements and product regulation. Bilateral and regional investment agreements may also give tobacco companies the right to make complaints against national governments for harm to the value of their investment in a host country. Transnational tobacco companies strongly support trade liberalization agreements giving them greater access to developing country markets, and have lobbied national governments to support investor–State dispute settlement rights in regional trade and investment agreements.[41]

In addition to defining the obligations that countries owe under international law, trade and investment agreements can have a broader, political function, as tools used by transnational tobacco companies to place pressure on national governments to weaken their domestic tobacco control laws. The risks are greatest for smaller countries, and for developing and least developed countries, which may lack the financial resources to defend complaints, or the human resources to provide accurate advice about the scope of global trade laws and global trade and investment agreements.[42] Article 5.3 of the FCTC states that "In setting and implementing their public health policies with respect to tobacco control, Parties should act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law".[43] It is clear from this article that the tobacco industry is not a trustworthy or reliable source of information for governments about the scope of their obligations under the FCTC, under WTO Agreements or any other trade or investment agreement.[44]

WTO Agreements impose several different kinds of obligations on WTO members. Firstly, under the GATT, WTO members must not impose customs duties that exceed the "bound" tariff rates set out in each member's GATT schedule.[45] The aspiration of the WTO system is for countries to eliminate non-tariff barriers, and to progressively lower their tariff barriers.[46] Although lower tariffs may result in cheaper tobacco imports, greater competition and increased domestic consumption, national authorities are not precluded from raising taxes on both imported and domestic tobacco products in

order to counter this effect. On the other hand, since the WTO Agreements prohibit the discriminatory treatment of imports, the risk remains that high domestic tax rates applied equally to both imported and domestic goods will be difficult to achieve in political terms.[47] Thailand's remarkable achievement in progressively raising tobacco taxes until they reached 71.5% of retail price in 1999 was an important factor in enabling it to reduce smoking rates, despite an adverse WTO ruling in 1990 that required it to wind back its government monopoly on tobacco and to permit tobacco imports.[48]

Secondly, a core principle underlying the WTO Agreements is trade without discrimination.[49] WTO members are prohibited from adopting laws and policies that have the effect of treating imported goods less favourably than "like" domestically produced goods (the principle of national treatment), and from discriminating between "like" goods imported from third countries (principle of most favoured nation treatment). These principles are reflected in Articles I and III of the GATT,[50] which applies to international trade in tobacco products, and in Article 2.1 of the TBT Agreement),[51] which applies to tobacco product requirements, such as tobacco packaging and labelling requirements, and restrictions on flavoured tobacco products.[52]

In circumstances where a WTO member's tobacco control laws are considered to have a discriminatory effect, that member may nevertheless seek to justify them on the basis of Article XX(b) of GATT, which provides an exception for measures that are "necessary to protect human, animal or plant life or health". Article XX(b) provides that such measures must not be applied in a manner that constitutes unjustifiable discrimination between countries, or a disguised restriction on international trade.[53]

In contrast to GATT, there is no human health exception for measures that are considered to be in breach of the principles of national treatment and most favoured nation treatment under Article 2.1 of the TBT Agreement. However, in the United States – Clove Cigarettes case, the Appellate Body drew attention to the sixth recital to the TBT Agreement, which recognizes that no country should be prevented from taking measures necessary "for the protection of human, animal or plant life or health, of the environment or for the prevention of deceptive practices, at the levels it considers appropriate", provided that they are not applied in a way that constitutes discrimination or are a disguised restriction on international trade.[54] A tobacco control measure that has a negative impact on the competitive opportunities for tobacco exports of another member is not, for that reason, prohibited, provided that the detrimental impact "stems exclusively from a legitimate regulatory distinction".[55]

Thirdly, Article 2.2 of the TBT Agreement requires WTO members to ensure that their technical domestic regulations do not have the effect of creating "unnecessary obstacles to trade".[56] Article 2.2 clarifies this obligation by stating that "technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create".[57] Article 2.2 acknowledges that the "protection of human health or safety, animal or plant life or safety" is a legitimate objective that members can seek to fulfil, provided that in doing so, the technical regulations are not more trade-restrictive than necessary.

Scholars working in the field of international trade regulation and health have pointed to the considerable degree of deference shown by WTO panels and the Appellate Body towards the

legitimate policy objectives of members.[58] For example, in the United States – Clove Cigarettes case, the WTO Panel found that United States legislation banning the production and sale of clove-flavoured cigarettes[59] was not more restrictive than necessary to fulfil the legitimate objective of reducing youth smoking, under Article 2.2 of the TBT.[60] The Panel referred to the *Partial guidelines for implementation of Articles 9 and 10 of the WHO FCTC*, which recommend that "Parties should regulate, by prohibiting or restricting, ingredients that may be used to increase palatability in tobacco products".[61] The Panel noted that these guidelines "show a growing consensus within the international community to strengthen tobacco control policies through regulation of the content of tobacco products, including additives that increase the attractiveness and palatability of cigarettes".[62]

On the other hand, in the same case, the Appellate Body found that by exempting menthol cigarettes from the legislative ban that applied to all other flavoured cigarettes, the legislation gave less favourable treatment to clove cigarettes imported from Indonesia than it did to American-produced menthol cigarettes, in breach of the national treatment principle in Article 2.1.[63] The prohibition on discriminating between different imports, and between imports and domestic goods, contained in both Article 2.1 of the TBT and in the GATT, applies only to "like products". As the Appellate Body pointed out, the concept of "like products" "serves to define the scope of products that should be compared to establish whether less favourable treatment is being accorded to imported products".[64] According to the Appellate Body, menthol and clove cigarettes were both like products, since both were in a competitive relationship for the purposes of satisfying smokers' addition to nicotine, and both flavourings had the capacity to mask the harshness of tobacco smoke.[65]

As pointed out above, a tobacco control law that has a detrimental impact on the competitive opportunities of imported tobacco products in the marketplace will not be inconsistent with Article 2.1 provided that this detrimental impact stems exclusively from a legitimate regulatory distinction.[66] The regulatory purpose of legislative provisions is therefore central to determining what constitutes less favourable treatment under Article 2.1.[67] In United States – Clove Cigarettes, the Appellate Body decided that the distinction drawn under the United States legislation between menthol and other flavourings (including cloves) could not be sustained, since both menthol and cloves mask the harshness of tobacco and make initiation easier for young people – factors which undermined the legitimacy of the exemption for menthol under this legislation.

The immediate lesson to draw from United States – Clove Cigarettes is that national authorities should take care, in framing their tobacco control laws, to ensure that product bans are applied equally to all imported and domestic tobacco products that are considered to be "alike". The broader lesson is that, as with the impact of the TRIPS Agreement on national policies for providing universal access to essential medicines (see Chapter 15), countries will need to increase their familiarity with WTO obligations in order to frame and implement their national policies effectively. It may be helpful to coordinate the provision of expert assistance to governments of small and low-income countries at the regional level, including through regional organizations. WHO and the Secretariat of the WHO FCTC may also be able to provide assistance to national authorities that are considering or drafting tobacco control laws. At the national level, countries will need to coordinate the activities of their health, trade and finance ministries in order to ensure that they do not

undertake trade and investment obligations that conflict with their health goals, including their capacity to effectively regulate tobacco, alcohol and unhealthy food products.

(d) Bilateral and regional investment agreements and domestic tobacco control laws

This report does not provide a technical review of key obligations under WTO Agreements, nor of the obligations that may arise under bilateral or multilateral trade and investment agreements.[68] Trade and investment agreements cover a wide spectrum. They include investor-State contracts (for example, between a country and a transnational tobacco company), customs agreements, bilateral investment treaties, and regional trade and investment agreements, including the Transatlantic Trade and Investment Partnership (under negotiation at the time of writing),[69] and the Trans-Pacific Partnership (concluded in 2015).[70] While the GATT and TBT provisions described above prohibit discriminatory and trade-restrictive domestic regulations that place imports at a disadvantage, investment agreements protect the investments of foreign investors within the host country. In many cases, they also give the foreign investor standing to seek compensation if a dispute arises under the agreement.[71]

Contracts entered into between a foreign tobacco company and a host State, as well as joint ventures between State-owned tobacco companies and foreign investors, may cause serious harm to tobacco control efforts when they contain freezing and stabilization clauses that provide the investor with an assurance that the regulatory environment will not change within the host State, or that the foreign investor may be compensated if it does.[72] In circumstances where tax holidays are given to tobacco investors, this will reduce government revenues and undermine the capacity of the government to support worthwhile programmes in health and other sectors. Similarly, where the excise rate on tobacco products is frozen for the benefit of the tobacco investor, a country will deprive itself of the most powerful tool that can be applied to reduce tobacco consumption – that is, high rates of internal taxation applied to both imported and domestically produced tobacco products. Guidelines adopted by COP under Article 5.3 of the WHO FCTC recommend that Parties should not to give preferential tax treatment or other privileges to the tobacco industry, and should treat State-owned tobacco companies no differently to other members of the tobacco industry.[73]

In addition to non-discrimination, international investment agreements typically require the host State to provide fair and equitable treatment to the investor, and to protect the investor against measures that effectively expropriate their investment. Recent challenges brought by tobacco companies under bilateral investment agreements illustrate how these agreements may be used as a weapon to resist implementation of the WHO FCTC and effective tobacco control laws. For example, in 2012, Philip Morris Asia brought a claim against Australia arguing that Australia's tobacco plain packaging legislation represented an expropriation of its investment in Australia.[74] In 2015, this claim was unanimously dismissed.[75] In 2010, Philip Morris companies began a claim for US$ 25 million compensation under its bilateral investment agreement with Uruguay.[76] Uruguay's legislation prevents the use of "brand families" as a marketing tool by restricting tobacco brands to one variant only, and requires health warnings to cover 80% of the front and back of the pack.[77] Although foreign investment may assist a country with its economic development, there is no health benefit in reducing the cost of tobacco products, less still in giving transnational tobacco companies

the right to seek compensation for the economic impacts of laws and policies that are designed to reduce tobacco consumption within that country. Scholars have pointed to a range of mechanisms that could be adopted by countries involved in the negotiation of trade and investment agreements in order to protect the policy space of governments seeking to implement the right to health. These include excluding tobacco products from all trade and investment agreements, or recognizing clear exceptions for measures that seek to protect human life and health.[78] Other options include side letters acknowledging a shared understanding that certain measures shall not constitute a breach of the agreement.

13.2 Pricing and taxation

This report now turns to consider core obligations under the WHO FCTC whose implementation into domestic law will usually require legislation, executive orders and other forms of legal regulation. The WHO FCTC recognizes that tax and price measures are a powerful, cost-effective tool for reducing tobacco consumption, particularly among young people.[79] Article 6 of the WHO FCTC calls on Parties to implement tax policies (and where appropriate, pricing policies) in order to reduce tobacco consumption, and to prohibit or restrict the availability of tax- and duty-free tobacco products.[80]

Uniformly high tobacco prices achieved through high specific excise taxes, based on weight or amount of tobacco, help to prevent tobacco initiation, encourage quitting (rather than switching to cheaper brands), and to reduce the amount of tobacco consumed by those who do not quit.[81] Excise taxes should be applied equally to the tobacco in all brands and forms of tobacco, whether imported or domestically produced. Low specific excise taxes in low-income countries are a substantial reason for the significant price differences between tobacco products in many low- and high-income countries.[82] In addition, rapid economic growth and rising incomes have also contributed to an increase in the relative affordability of tobacco products in many low- and middle-income countries.[83] Excise taxes should take account of inflation; for example, in Australia, the federal excise on tobacco is adjusted twice each year in line with average weekly earnings.[84] An excise tax that comprises at least 70% of the retail price is a useful benchmark for countries where excise taxes are currently much lower; in addition to saving lives, and reducing the burden on national health systems, this benchmark will generate substantial tax revenues that governments may use to fund tobacco control and other health programmes.[85]

The reduction in tobacco consumption that results from higher tobacco prices affects populations differently depending on their income levels. In high-income countries, evidence suggests that a 10% increase in the price of tobacco results in an average reduction in tobacco consumption of around 4%.[86] In low- and middle-income countries, the reduction in demand is significantly higher. WHO has published guidance to assist countries to develop effective and efficient tobacco taxation policies.[87]

In low-income populations, tobacco consumption entrenches poverty and undermines health in other ways; for example, by diverting spending from necessities like food, education and health care.[88] For example, in Indonesia, households with smokers spend an average 11.5% of household expenditure on tobacco, compared with 2.3% on health, 3.2% on education, and 11% on meat, fish, eggs and milk.[89] There is evidence that low-income smokers, and youth smokers, are more price

sensitive and more likely to quit or to reduce their level of consumption when tobacco becomes more expensive. Reducing the relative affordability of tobacco products may therefore be an important way of reducing health inequalities between higher and lower income groups within a country.[90]

Some countries have passed laws that dedicate a proportion of tobacco tax revenues to smoking cessation programmes, or to health and welfare programmes targeting low-income groups.[91] By ensuring sustainable funding for health and social welfare programmes, governments may find that tobacco taxes receive a higher level of public support.[92] To ensure that their impact is not eroded over time, governments should create a legislative mechanism to adjust excise taxes upwards to keep pace with inflation and real income growth. As discussed Section 13.1(d), entering into agreements with tobacco manufacturers or other entities to limit tax increases for imported or domestically produced tobacco products harms tobacco control efforts by undermining the most powerful tool in tobacco control: increasing the retail price of tobacco products.

13.3 Labelling and packaging of tobacco products

High rates of tobacco use are partly a result of lack of knowledge about the addictive nature and health risks of tobacco use. In China, for example, fewer than one out of every four adults are aware that tobacco use can cause stroke, heart disease and cancer.[93] Prominent health warnings on tobacco packages are an important tool for communicating the specific risks of tobacco use which – in combination with other measures to reduce tobacco consumption – can encourage quitting.[94] Article 11 of the WHO FCTC requires Parties to implement laws to ensure that tobacco labelling is not false, misleading or deceptive. For example, for many decades tobacco companies have manufactured and advertised tobacco brands that are described as "light", "mild", and "low tar", despite knowing that these products are no less harmful than regular products.[95] Many smokers persist with the false belief that "light" cigarettes are less likely to cause them harm.[96] Evidence also indicates that smokers of "light" cigarettes are less likely to quit.[97]

Article 11 of the WHO FCTC requires Parties to implement effective measures to ensure that all tobacco products and packages carry health warnings describing the harmful effects of tobacco use. These warnings should cover 50% or more (and must cover 30%) of the principal display areas of each tobacco package. *Guidelines for the implementation of Article 11* urge Parties to the WHO FCTC to use colour pictorial warnings to emphasize text-based warnings and to rotate health warnings periodically to ensure that their impact does not diminish over time.[98] Furthermore, as experience in New Zealand illustrates, pictorial warnings should be culturally appropriate and should reflect the different concerns of smoker subgroups, as well as being well integrated into mass media campaigns.[99]

The guidelines on Article 11 also recommend that Parties adopt "plain tobacco packaging" measures that restrict the use of trademarks, logos, brand colours and images, other than brand and product names in a standard colour and font.[100] In 2011, Australia became the first country to pass plain tobacco packaging legislation embodying these characteristics,[101] followed by the United Kingdom[102] and Ireland[103] in 2015. In 2016, the Court of Justice of the European Communities upheld the right of Member States of the European Union to pass plain packaging laws that exceed the requirements

for the standardization of tobacco packaging contained in the European tobacco products directive.[104] These requirements include mandatory health warnings, comprising text and colour photographs, covering 65% of the back and front of tobacco packages.[105] Studies published since the introduction of Australia's plain tobacco packaging legislation illustrate that these restrictions are not only associated with lower smoking appeal and more frequent thoughts about quitting,[106] but also with more frequent requests for quitting assistance. For example, in Australia, one study reported a 78% relative increase in requests for quitting assistance four weeks after the new legislation took effect. This increase in requests for quitting assistance persisted over a significant period of time (43 weeks).[107] Another study found that one year after implementation, there was no evidence of the catastrophic, unintended consequences predicted by the tobacco industry, including a rise in the use of unbranded, illicit or contraband tobacco.[108]

13.4 Advertising, promotion and sponsorship

Comprehensive bans on tobacco advertising can significantly reduce demand. Article 13 of the WHO FCTC requires Parties to implement a comprehensive ban on all forms of tobacco advertising, promotion and sponsorship, to the extent that this is possible under their national constitutions.[109] Article 13 emphasizes that this includes "a comprehensive ban on cross-border advertising, promotion and sponsorship" originating from the territory of each Party. [110] Parties must implement these requirements through appropriate legislative, executive or administrative measures within five years. Guidelines for the implementation of Article 13 emphasize that a comprehensive ban on advertising, promotion and sponsorship would extend not only to traditional forms of media, such as television, radio and print media, but to digital technologies (such as mobile phones and other devices connected to the Internet), and to advertising in cinemas prior to feature films.[111] Such a ban would also extend to all forms of commercial communication and to all forms of contribution to individuals, activities and events that have the aim or likely effect of promoting tobacco products or tobacco use[112] (**Box 13.2**).

A comprehensive ban on tobacco advertising should include a ban on all retail advertising of tobacco products, including cigarette pack displays at point of sale, since these stimulate unplanned purchases, especially among smokers who are those trying to quit.[113] The *Guidelines for the implementation of Article 13* state that Parties to the WHO FCTC should only permit "the textual listing of products and their prices" at points of sale, "without any promotional elements".[114] They also state that a comprehensive ban, as required by Article 13, should include a ban on both incoming and outgoing forms of tobacco-related advertising, promotion and sponsorship that cross the borders of a Party to the Convention.[115] One benefit of implementing a comprehensive ban on all tobacco advertising and promotion is that it reduces the influence of the tobacco industry over the media, and over entertainment, cultural and sporting organizations which would otherwise become proxies for the tobacco industry in resisting other tobacco control laws and policies.[116]

Box 13.2: Key features of a comprehensive ban on tobacco advertising, promotion and sponsorship under Article 13 of the WHO Framework Convention on Tobacco Control

A comprehensive ban on tobacco advertising, promotion and sponsorship would apply to:

- All kinds of tobacco products, as well as tobacco use generally;
- Any tobacco brand names, trademarks, logos, and all other corporate promotion of tobacco manufacturers and tobacco businesses;
- All forms of media advertising, regardless of the medium involved (including online interactive marketing), as well as retail sales promotions, direct marketing, billboard advertising, and public relations;
- All forms of contribution and financial support to events, activities, individuals and organizations where the aim or likely effect is to promote tobacco use, tobacco products or tobacco businesses either directly or indirectly;
- Cross-border advertising, that is, tobacco-related advertising, promotion and sponsorship that enters into, or which originates from, a country's territory;
- Any person or organization who is involved in producing, placing, organizing or disseminating tobacco advertising, promotion and sponsorship;
- Entities responsible for tobacco advertising, promotion and sponsorship should be defined widely in order to cover the entire marketing chain.
- In addition, the ban should extend to retail tobacco displays, vending machines, and to Internet sales of tobacco products.
- Parties should consider plain tobacco packaging requirements that suppress the advertising of brand logos and design elements.
- Promotion to the public of activities undertaken as part of "corporate social responsibility" programmes by tobacco companies should be prohibited. Financial contributions made by tobacco companies to community, welfare and arts organizations should also be prohibited.
- Legislation should not include any list of prohibited activities which is understood to be exhaustive.
- A comprehensive ban must be supported by public education programmes, and effective monitoring, enforcement, and penalties for breach.

In some countries, the majority of spending on tobacco advertising and promotion takes the form of price discounts paid by tobacco manufacturers to create incentives for retailers to stock their brands, to lower the retail price of specific brands, and to stimulate competition based on price.[117] For example, in the United States, in 2013, US$ 7.6 billion (more than 85% of total tobacco advertising expenditures in that year) were spent on various kinds of incentive payments to wholesalers and retailers.[118] Evidence suggests that these payments may cushion the impact of price rises on price-sensitive adolescents, resulting in higher rates of initiation to regular smoking.[119] Legislative responses to these forms of tobacco promotion and price manipulation include

mandatory reporting of all advertising and promotional payments by tobacco companies, bans on wholesale and retail price discounting, and minimum price laws that prohibit retailers from selling below a statutory minimum.[120] In addition, WHO has recommended prohibiting tobacco manufacturers or retailers from claiming these payments as business tax deductions.[121]

In many countries, smoking remains common in high-grossing movies and in popular television programmes.[122] Smoking in films and interactive games, and the promotion of tobacco products through entertainment products has a powerful impact on young people.[123] Guidelines for the implementation of Article 13 recommend that Parties prohibit the depiction of tobacco brand images in entertainment products and require entities involved in the production or distribution of those products to certify that no money, gifts, interest-free loans or other assistance have been given in exchange for this form of publicity.[124] The guidelines recommend that Parties implement a classification or ratings system that takes account of tobacco use, and requires the display of anti-tobacco advertisements at the beginning of any entertainment product that depicts tobacco products or tobacco use.[125] In 2012, India implemented regulations that make television broadcasters and cinema and theatre owners responsible for broadcasting anti-tobacco messages to counteract the depiction of smoking and other forms of tobacco use in films and television programmes.[126] These requirements are summarized in **Box 13.3**.

Box 13.3: India's law to counteract the depiction of tobacco use in films and television programmes[127]

"Old" films and television programmes:

- Since 2012, Indian regulations require 30-second anti-tobacco messages to be screened at the beginning and during the middle of all "old" films and television programmes that display tobacco products. An old film or television programme refers to a film that was certified or a television programme that was produced before the regulation took effect.
- In the case of television programmes, a health warning must also be displayed at the bottom of the screen during the period that tobacco products are visible.
- The anti-tobacco messages and health warnings must be in the same language used in the film or television programme (in the case of dubbed or subtitled programmes, the language of dubbing or subtitle). This language requirement applies to both new and old films and programmes.
- Penalties for failure to comply with these requirements may include the suspension or cancellation of the licence of the broadcaster or cinema owner.

"New" films and television programmes:

- A 30-second anti-tobacco message must also be screened at the beginning and during the middle of all new films and television programme that display tobacco products or show them being used.
- A health warning must also be displayed at the bottom of the screen during the period that tobacco products are visible in all new films and television programmes.
- An audiovisual disclaimer warning of the harms caused by tobacco use (with a minimum

duration of 20 seconds) must be shown at the beginning and during the middle of all new films and television programmes that display tobacco products or their use.

- New films that do not meet these requirements may not be certified for public exhibition.
- Failure to comply with these requirements may result in cancellation or suspension of the licence of the broadcaster or cinema owner.

13.5 Second-hand tobacco smoke

Article 8 of the WHO FCTC requires Parties to implement legislative, executive and administrative measures that provide protection from exposure to tobacco smoke in "indoor workplaces, all public transport, indoor public places and, as appropriate, other public places".[128] Reducing exposure to second-hand tobacco smoke benefits health in many ways, such as by significantly reducing tobacco consumption[129] and by reducing the likelihood that young people will progress to established smoking.[130] For example, the Turkish Tobacco and Alcohol Market Regulatory Agency reported that tobacco sales fell by 16% in the year following the implementation of Turkey's indoor smoking ban in 2009.[131] Smoke-free legislation is also associated with significant reductions in hospital admissions for myocardial infarction precipitated by exposure to tobacco smoke,[132] and with significant reductions in both premature birth and paediatric hospital admissions for asthma.[133] The obligation to provide protection from tobacco smoke is grounded in fundamental human rights and freedoms.[134] Failure to provide protection from exposure to tobacco smoke not only undermines the right to health, but may violate a range of other human rights obligations that, in many countries, are enforceable by individuals through the courts.[135]

The *Guidelines for implementation of Article 8*, adopted by the COP, confirm that there is no safe level or threshold value for exposure to tobacco smoke.[136] National laws should therefore insist on a complete ban on smoking in order to create 100% smoke-free environments. The guidelines emphasize that "ventilation, air filtration and the use of designated smoking areas (whether with separate ventilation systems or not), have repeatedly been shown to be ineffective and there is conclusive evidence ... that engineering approaches do not protect against exposure to tobacco smoke.[137] Effective protection from second-hand tobacco smoke requires legislation, since voluntary smoke-free policies based on accommodation of smokers' needs have repeatedly been shown to be ineffective.[138]

The *Guidelines for the implementation of Article 8* provide advice on the definition of key terms in domestic legislation implementing this Article. For example, smoking bans operating in "indoor public places and, as appropriate, other public places" should apply to "all places accessible to the public… regardless of ownership or right of access".[139] This would include schools, hospitals and health care establishments, restaurants, bars, shops, train and bus stations, and airports. Since even small levels of exposure to tobacco smoke create a risk to health, lawmakers in some States and provinces have implemented smoking bans on public beaches, in and around playgrounds, sporting facilities and picnic areas, and in cars carrying children.[140]

Contrary to claims by the tobacco industry, evidence suggests that smoke-free laws do not reduce business profitability.[141] Compliance with smoking bans can be encouraged by imposing monetary fines on both individuals and businesses, although enforcement efforts should focus on the latter.[142] Over time, smoke-free laws will increasingly be enforced by public convention, as cultural norms change and both smokers and non-smokers develop a preference for smoke-free environments. Governments may also consider extending smoke-free laws to smokeless forms of tobacco, and electronic cigarettes, in countries where either of these are commonly used. For example, the use of electronic cigarettes in smoke-free environments may undermine the denormalizing effects of smoke-free laws, reduce quitting incentives and expose bystanders to exhaled aerosol toxicants.[143] In August 2014, Maharashtra became the first state in India to ban the use of smokeless tobacco in a range of public places, with penalties for those caught chewing or spitting tobacco.[144] In 2016, the state of California extended the smoke-free laws that apply to cigarettes to electronic cigarettes, and raised the minimum purchasing age for all forms of tobacco, including electronic cigarettes, to 21 years.[145]

13.6 Resisting industry interference in tobacco control laws and policies

Tobacco control laws and policies in many countries are vulnerable to the influence of tobacco companies and other business groups that benefit economically from high rates of tobacco use. Article 5.3 of the WHO FCTC requires Parties, in setting and implementing their public health policies with respect to tobacco control, to protect these policies from "commercial and other vested interests of the tobacco industry in accordance with national law".[146] Similarly, the Protocol to Eliminate Illicit Trade in Tobacco Products requires that national authorities responsible for tracking and tracing tobacco products should interact with the tobacco industry "only to the extent strictly necessary" to administer that system.[147]

The *Guidelines for implementation of Article 5.3* point to the "irreconcilable conflict between the tobacco industry's interests and public health interests".[148] Accordingly, the guidelines urge Parties to limit their interactions with the tobacco industry and to ensure that any interactions that do occur are transparent. For example, the Russian Federation's tobacco control law requires all correspondence between government agencies and the tobacco industry to be made publicly available on the Internet.[149] Partnerships, memoranda of understanding and other non-binding or non-enforceable agreements with the tobacco industry should be rejected.[150] Tobacco companies should not be involved in the drafting of tobacco control laws, nor should government accept voluntary codes of conduct drafted by the tobacco industry as a substitute for legally enforceable standards.[151] Members of Parliament and government staff should resist any attempts by the tobacco industry to influence legislative and executive processes during the passage of tobacco control laws (this may extend to direct tampering with the wording of draft legislation during the legislative process).[152]

The *Guidelines for the implementation of Article 5.3* point out that "corporate social responsibility" activities undertaken by the tobacco industry should be recognized as marketing activities that are in conflict with the goals of tobacco control; accordingly, Parties should not endorse or support such

activities.[153] Tobacco companies should not be involved in the design or implementation of any public education programmes related to tobacco control:[154] this extends to industry support or involvement in youth non-smoking programmes. Parties should not give incentives (including tax incentives) to the tobacco industry to establish or run businesses, and State-owned tobacco enterprises should be treated no differently to other participants in the tobacco industry.[155]

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